



dismissed by the trial court.<sup>1</sup>

It is therefore ORDERED that the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.<sup>2</sup> Costs shall be assessed against the petitioner.

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JERRY L. SMITH, JUDGE

CONCUR:

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JOE B. JONES, PRESIDING JUDGE

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J. CURWOOD WITT, JUDGE

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<sup>1</sup> Although the trial court properly dismissed the petitioner's "motion from relief of judgment or order," its dismissal of the petition for post-conviction relief was improper. The petitioner timely filed his petition for post-conviction relief. See Carter v. State, 952 S.W.2d 417 (Tenn. 1997); Maney v. State, 03C01-9612-CR-00470 (Tenn. Crim. App., Oct. 10, 1997). However, because the petitioner did not file a notice of appeal from the order of dismissal, this Court is without jurisdiction to consider the matter. Moreover, we have decided that the interest of justice does not require waiver of the notice of appeal in this case. T.R.A.P. 4(a).

<sup>2</sup> The petitioner alleges on appeal for the first time that the indictment entered against him is invalid because it failed to state an appropriate mens rea. This issue is without merit. See State v. Hill, 01S01-9701-CC-00005 (Tenn., Nov. 3, 1997).